

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LARRY FREUDENBERG, Individually and
On Behalf of All Others Similarly Situated,

Civil Action No.

Plaintiff,

07 Civ. 8538 (JPO) (MHD)

- against -

E*TRADE FINANCIAL CORPORATION,
MITCHELL H. CAPLAN, ROBERT J.
SIMMONS and DENNIS E. WEBB,

Defendants.

**NOTICE OF MOTION FOR: (1) PRELIMINARY APPROVAL OF SETTLEMENT; (2)
CERTIFICATION OF THE CLASS FOR PURPOSES OF SETTLEMENT; (3)
APPROVAL OF NOTICE TO THE CLASS; AND (4) SCHEDULING OF A FINAL
APPROVAL HEARING**

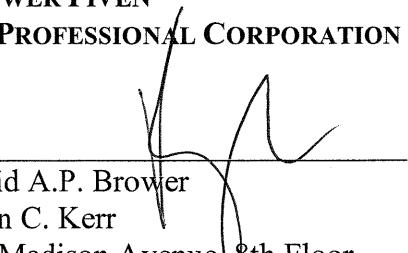
PLEASE TAKE NOTICE that Lead Plaintiffs Kristen Management Limited, Straxton Properties, Inc., and Javed Fiyaz, Co-Lead Plaintiff Ira Newman, and additional plaintiffs Peter Farah and Andrea Frascaroli (“Plaintiffs”) respectfully move this Court pursuant to FED. R. CIV. P. 23 for an order: (i) preliminarily approving the proposed settlement (“Settlement”); (ii) certifying the proposed settlement class for purposes of the Settlement (“Settlement Class”); (iii) approving the form and manner of giving notice of the Settlement to the Settlement Class; and (iv) scheduling a hearing for final approval of the Settlement, the plan of allocation, and Plaintiffs’ Counsel’s motion for an award of attorneys’ fees and litigation expenses.

The Unopposed Motion for: (1) Preliminary Approval of Settlement; (2) Certification of the Class for Purposes of Settlement; (3) Approval of Notice to the Class; and (4) Scheduling of a Final Approval Hearing shall be heard on a date to be determined by the Honorable J. Paul

Oetken. The Motion is based upon the accompanying Memorandum of Law in support thereof, the accompanying Declaration of Brian C. Kerr and the exhibits thereto, and other such matters and arguments as the Court may consider during the hearing of this Motion.

Dated: May 17, 2012

**BROWER PIVEN
A PROFESSIONAL CORPORATION**



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Lead Counsel for Plaintiffs

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Co-Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2012, I served true and correct copies of the foregoing Notice of Motion For: (1) Preliminary Approval Of Settlement; (2) Certification Of The Class For Purposes Of Settlement; (3) Approval Of Notice To The Class; And (4) Scheduling Of A Final Approval Hearing on Defendants' counsel by causing copies to be sent by the ECF system and by electronic mail to:

Dennis Glazer
Amelia T.R. Starr
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017

Brian C. Kerr

